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UNCLAS SECTION 01 OF 04 NAIROBI 002850

SIPDIS

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SUBJECT: PROTESTS OVER RESTRICTIVE MEDIA BILL

Ref: 06 NAIROBI 973

Summary

1. Parliament passed a Media Bill on December 10 which, if signed by President Mwai Kibaki, would potentially subject the independent media to intrusive government interference. The Media Bill was presented to Parliament and the public as a series of amendments to the Communications Act of 1998. However, the Media Bill is nearly a complete re-write of the Communications Act, which provides the framework for media regulation. Problematically, one section of the original act the Media Bill does not override is a provision granting the Minister of Internal Security and Provincial Administration extensive powers to enter media outlets at will and to seize equipment and/or close such outlets if he determines it constitutes, "a threat to security and tranquility," terms which are not defined. The Media Bill would make a new Communications Commission of Kenya (CCK) the sole regulator of all information technology and media, and give it the power to set standards for the manner, time and type of programs to be broadcast by media. It also gives the CCK the ability to levy steep fines against broadcasters who violate these putative standards. The Media Bill allows for extensive political influence over the CCK by granting the Minister of Information and Communications the power to appoint CCK commissioners and to issue binding policy instructions to the CCK.

2. Media owners and journalists have waged an all-out, coordinated media blitz against the Media Bill and have made direct appeals to the President and Prime Minister (PM) to reject the law. Journalists held peaceful public demonstrations in Nairobi and other cities on December 12 to coincide with the Jamhuri (Independence) Day celebrations. Police arrested several journalists, who were released later that day without charge. Civil society groups have also condemned the Media Bill. The Ambassador issued a statement on December 13 voicing concern that the Media Bill threatens Kenya's hard-won press freedom and raises questions about the coalition government's commitment to fundamental reforms (See text para. 12). Journalists continued to protest and police again arrested journalists on December 15 as they protested at Parliament. Reacting to increasing public condemnation of the Media Bill, several cabinet ministers, including the PM, have denounced the Media Bill and demanded that it be amended. The President must now decide whether to sign the bill into law or whether to reject the Media Bill and return it to Parliament for revision. The Ambassador sent a note to the President calling attention to the problematic nature of some provisions in the Bill and describing how other democratic countries,

like the U.S., regulate the media. End Summary.

#### The Media Bill

¶3. The Kenya Communications Amendment Bill (commonly known as the Media Bill) is a revival of an earlier Media Bill which lapsed when the Ninth Parliament failed to pass it before being dismissed in October 2007. The ostensible goal of the Media Bill is to amend the Kenya Communications Act of 1998. However, critics contend that the Media Bill is a nearly complete rewrite of the previous legislation with just a few key provisions left intact, which is what has spurred the media/public reaction. When the Grand Coalition Government was formed in April 2008, the new Minister for Information and Communications, Samuel Poghisio, consulted with owners of major media houses of Kenya to draft a new bill that would incorporate the concerns of both government and media. During this process, media owners believed that the Media Bill would repeal Section 88 of the 1998 legislation, which grants the Minister of Internal Security and Provincial Administration (the Minister of Internal Security) extensive powers to enter media outlets at will and to seize equipment and close such outlets if s/he determines it poses, "a threat to security and tranquility," terms which are not defined. However, the new version published in July 2008 did not repeal Section 88. It also gave the Minister of Information and Communications (the Minister of Information) the ability to exert political influence over the media.

Government Interference Allowed

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¶4. The Media Bill retains or creates provisions that will permit extensive government interference with freedom of the media. By maintaining Section 88 powers to raid media outlets, the Minister of Internal Security can perpetrate raids like that made on the Standard newspaper in 2006 (Reftel). The Media Bill would also establish a new Communications Commission of Kenya (CCK) as the licenser of information technology service providers and media outlets. The CCK would be empowered to prescribe standards related to time, type, and mode of programs to be aired. It would also mediate disputes arising from implementation of the Media Bill and would be empowered to impose steep fines for violations with no requirement that the fines be proportionate to the nature of the infraction. Such an expansive role for the CCK would not necessarily be problematic if it were an independent body, insulated from economic and political pressures. However, the Media Bill directly subjects the CCK to political influence by allowing the Minister of Information to appoint the CCK commissioners and to issue binding policy directives to the body. Some critics complain that the Media Bill makes no mention of, and so effectively abolishes, the recently-established Media Council, composed of media owners and practitioners, which was aimed at providing for media self-regulation.

No Sense of Irony - and Maybe History

¶5. Kenya's media has become increasingly free since 2002, when the then-newly elected President Kibaki loosened the severe media restrictions of the government of former President Daniel arap Moi. Broadcast media has expanded exponentially since then: from one and a half TV stations (the state-owned Kenya Broadcasting Corporation (KBC) and the semi-independent Kenya Television Network, which only reached Nairobi viewers) and one government radio station to half a dozen TV channels and countless FM radio stations blanketing the country in English and vernacular programming. As media has expanded, so has its political strength. Media has at times been used by local and national politicians to enhance their own images with their constituents in their bids for

elective office, particularly in the 2007 general elections. Politicians, having won their seats in Parliament and the Cabinet, now resent the power of the media to run negative stories on them. Enjoying greater independence, the media has exposed, for example, excessive foreign travel of Members of Parliament (MPs), personal scandals related to MPs, and other political shenanigans. The media's recent campaign to publicize MPs' refusal to pay taxes on their approximately USD 10,000 monthly allowances - at a time when ordinary Kenyans have been hit by spiraling food costs - have resonated with the public and caused resentment among many MPs, who now feel that they need to bring the media to heel. This created the atmosphere in which the Media Bill was passed.

#### Parliament Adopts the Media Bill

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¶6. Media owners recognized the threat the Media Bill posed to their hard-won freedom and unsuccessfully mounted a campaign to undo the sections they had previously objected to before the Media Bill was presented to Parliament. However, despite protests by Kenyans both in and outside the media, the Media Bill was passed by Parliament on December 10. Out of a sitting parliament of 222 members, only 25 MPs voted for the Bill and three against, which is less than the required quorum that 30 MPs be present for a vote. Procedurally, if no one alerts the Speaker to a lack of quorum, Parliament can continue debate and take votes, which in this case it did. Ironically, many MPs not present at the vote have since criticized some provisions of the Bill as unconstitutional. They have subsequently been criticized by the public for failing to do their jobs appropriately.

#### Next Steps

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¶7. The Media Bill is now with the Office of Attorney General for fine tuning, after which it will be sent to the President, who must sign it into Law within 21 days of receipt, or send

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it back to Parliament with a memorandum explaining his objections. Parliament may then either revise the Bill in line with the President's objections or it may override the President's objections with the approval of 65 percent of the 222 MPs.

#### Media Protests: Journalists Arrested

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¶8. When the Media Bill was passed despite the courting of MPs and Cabinet members by media owners, the print and electronic media pursued a coordinated public campaign to paint it as draconian and a clear attack not only on the independence of the press but on the freedom of speech. From December 11 to date all media outlets except the state-run KBC carried extensive news reports and commentary against the Media Bill, and they have called on the President to reject it.

¶9. Journalists have also organized public protests. For example, on December 12 - Jamhuri Day - which celebrates Kenya's independence, media personalities from radio and television went to Nyayo Stadium where the President and many VIPs were commemorating the holiday. Several wore tee-shirts that read "No Taxes for MPS; No Taxes for Us," and were promptly arrested for unlawful assembly before they could enter the stadium, others carried placards and one wearing a prison uniform carried a petition for the President. All were carted away, some violently. All save two civil liberties activists were released that evening without charge (see septel). (Note: These protests coincided with civil society protests over spiraling food prices and the refusal of MPs to pay tax on their allowances. These demonstrations were in parallel but not related to the media efforts. End Note.)

¶10. Following the events on Jamhuri Day, the Media Owners

Association coordinated programming on all channels to raise public awareness of the issue. Media owners also on December 15 met with the PM, who supported their demands that the President not sign the Media Bill. Martha Karua, the Minister of Justice, National Cohesion, and Constitutional Affairs, also announced that her office was reworking the clauses of the Media Bill to delete the negative references, an unusual move by the Minister of Justice which appears to have a political, not a legal, basis. Meanwhile a small group of journalists who paraded near Parliament on December 15 were arrested. They were released after being charged with unlawful assembly.

#### Mission Efforts

¶11. The Mission has been working to make clear our concerns about the negative provisions of the bill. We have been in close contact with senior government officials, including the Minister of Foreign Affairs, Minister of Information, and Prime Minister. The Ambassador also sent a note to the President touching on these concerns and providing information about how other democratic countries, particularly the U.S., handle regulation of the media. On December 13 the Ambassador joined his German colleague with the media to discuss the bill. The Ambassador has met with the media owners to hear their concerns. While indicating that we share concerns, he also made clear that the media must also act responsibly and avoid the temptation to depict this as a "crisis." Should the President sign the bill, there will be opportunities in Parliament to amend it subsequently. It is also important to put the current situation in context. While we need to address the problems in the media bill, the heated debate regarding the media bill comes at a time when the coalition government's reform agenda is moving forward in a positive way.

¶12. On December 13, the Ambassador issued the following statement regarding the Media Bill and government reaction to peaceful protests. Begin text:

The United States is very concerned about recent actions which potentially threaten freedom of the media in Kenya. The partnership between the United States and Kenya is based on shared democratic values. Freedom of the media is central to those values and the maintenance of a strong democracy.

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Specifically, the United States is concerned that the Media Bill passed by Parliament gives excessive power to the government over the media. As passed, the Media Bill, among other provisions, gives the government authority to close down and dismantle media outlets by declaring a state of emergency or by citing security concerns. It will also give the Minister of Information undue influence over media content through the government-appointed Communications Commission.

The passage of the Media Bill runs counter to the coalition government's commitment to carry out fundamental reforms in order to strengthen democratic institutions and to promote the well-being of all Kenyans. Unrestricted access of the public to information provided by professional and independent media is vital to the successful functioning of the democratic process. It is, therefore, understandable that Kenyans across political, social, and ethnic lines are demonstrating their democratic spirit by speaking out to voice concerns about the Media Bill.

We are encouraged by the commitment shown by President Kibaki and Prime Minister Odinga, the leaders of the coalition government, to carry out the reform agenda. As the representatives of the Kenyan people, Parliament must play a responsible role to help implement the reform agenda. The Media Bill runs counter to that agenda. As drafted, it is a step backwards, and not a step towards the brighter future

that Kenyans want their leaders to pursue.  
End Text.

Comment

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¶13. There are legitimate concerns that the mushrooming vernacular FM stations, with their often lax editorial policies, can incite public violence -- as happened in the run-up to, and the aftermath of, the December 2007 election -- potentially threatening national security. The Media Bill as passed, however, overreaches by retaining the Minister of Internal Security's unbridled power to raid media outlets and by granting the Minister of Information the ability to exert political influence over a nominally independent CCK.

¶14. (Cont'd) Media owners and journalists are unlikely to desist from their efforts to fight the Media Bill, and their efforts appear to be making some headway among the public. Civil society groups have adopted the media's cause and have included it in their parallel protests over high food prices and the MPs' refusal to pay taxes. Civil society efforts appear to have made headway among the political class; besides the PM and Martha Karua, several ministers and MPs have called for the Media Bill to be reworked to remove the offending clauses. However, a number of MPs and the leadership of Ministry of Information are equally adamant that the Media Bill be implemented as passed. The hard decision now falls on President Kibaki. We will continue to follow the issue closely and weigh in at the highest levels of government as necessary to support Kenya's hard-won press freedom. End Comment.

RANNEBERGER